

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2992 of 2018 (O&M)

Date of decision : 07.03.2019

Atma Singh

...Appellant

Versus

Jasvir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Param Preet Singh Brar, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court while accepting the appeal resulting in dismissal of the suit for recovery of ₹81,600/-.

The suit for recovery was filed on the basis of pronote and receipt which were not produced in evidence.

Defendant filed an application for issuing direction to the plaintiff to produce pronote and receipt on the basis whereof the suit has been filed. The plaintiff was granted six opportunities including two last opportunities and it is thereafter that the plaintiff came up with a story that the pronote and receipt have been lost in travelling. It was claimed that he has got recorded a diary entry in the police station.

Defendant in the written statement had admitted the execution of the pronote and pleaded that he had taken a loan of ₹60,000/- but he had

returned the same in three installments:-

- a) April/May 2009
- b) April/May 2010
- c) April/May 2011

He has further pleaded that on the reverse side of the pronote, every time an entry was made by the plaintiff acknowledging the receipt of ₹20,000/-.

Learned First Appellate Court keeping in view the conduct of the plaintiff and finding that the story put forth by him with regard to loss of the original pronote and receipt is not believable, reversed the judgment of the trial Court.

This Court has heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellant submitted that the First Appellate Court has committed error in overlooking the fact that the defendant had admitted the receipt of the loan amount and execution of the pronote and receipt. Hence, he submitted that the Court erred in accepting the appeal. He further submitted that even if the plea of the defendant is accepted, the plaintiff is still entitled to interest on the amount which has been refunded.

As regards first argument, it may be noted that the defendant has pleaded that he had paid amount in three installments and every time endorsement was made on the reverse page of the pronote and receipt by the plaintiff. Once the plaintiff has withheld the best evidence, the Court has

rightly drawn adverse inference against the plaintiff keeping in view his conduct when he after taking six opportunities to file reply to the application for production came up with a story that it has been lost.

As regards second argument, the interest is based upon the contract between the parties. Once the pronote and receipt have not been produced, the terms of the contract cannot be ascertained.

Keeping in view the fact that the plaintiff did not come to the Court with clean hands, the First Appellate Court has rightly dismissed his suit.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

07.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No